IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3532 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GONDAL NAGARPALIKA KARMACHARI SANGATHAN

Versus

GONDAL NAGARPALIKA

Appearance:

1. Special Civil Application No. 3532 of 2002

MR TR MISHRA for Petitioner No. 1

MR PK PAREKH for Respondent No. 1

MRS PUNANI, AGP for Respondent No. 2-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/07/2002

ORAL JUDGEMENT

#. It is a matter of regret that, in so many municipalities in the State, elected representatives or

the Chief Officers, as the case may be, are going on making illegal appointments, still, the Government is not taking any action against such municipalities, officers or elected representatives, as the case may be, and unfortunately, a situation is created in such a manner that, it is impossible for the municipalities to pay even the regular salary to its employees. Such matters are coming practically every day before this Court, wherein grievance is made on behalf of the employees that, even though, they are regularly recruited on the sanctioned posts, they are not paid their regular salary for want of funds. It is expected from the State Government to take strict action against such erring officers/office bearers, who are instrumental in creating this situation by recruiting the employees in such an illegal manner. It is high time that the State Government, instead of remaining a silent spectator, may take appropriate action including prosecuting them, otherwise, this unending problem will continue to occur for years to come. The State Government is supposed to act in an objective manner by taking strict action against such municipalities or against such erring officers, who are involved in such illegalities, and, ultimately, playing with the rights of the citizens of the town, who might be deprived of electricity or other facilities for want of funds.

#. This Court has noticed in various matters that the State Government is hardly taking any action in such matters and this vicious circle is going on, by which the benefit of employment is given to a few in an illegal manner and it is obvious that such employment is given either by the President or by the Chief Officer or by other office bearers to oblige their near ones. It is high time that the Government should take appropriate action even by taking the action of superseding such municipality or by taking strict action against the erring officer or the elected representative who is found to have committed the fraud by making such illegal appointments and such municipalities, therefore, should not be allowed to go scot free.

#. In the instant case, it is pointed out by the learned advocate appearing on behalf of the Gondal Nagarpalika that, so far as the Gondal Nagarpalika is concerned, such illegal appointments were made between 1987 and 1998 and about 94 employees were given appointments by the then President and the then Chief Officer by recruiting them over and above the sanctioned posts which resulted into the financial crisis and because of the same, even the Nagarpalika is not in a position to pay the regular

salary to all the employees and the result is that the regularly selected employees within the sanctioned set up are also denied the benefits of the pay scale recommended by the 5th Pay Commission. It is a matter of pity that, this is not the only municipality which is facing this difficulty, as, in so many municipalities, this Court has noticed that the employment is made over and above the sanctioned set up without taking prior approval from the Director of the Municipalities. It is a matter of regret that, still, the Government is not taking any action against such erring officers and the erring officers are taking advantage of the situation and the Government is remaining a silent spectator. Unless the State Government takes strict action, this unending process will go on for years to come. Under these circumstances, this Court is compelled to observe that the Government should take appropriate action to save so many municipalities from financial crisis. It is high time that, appropriate direction should be issued to the concerned municipalities in this behalf and appropriate action should promptly be taken against the erring officers/office bearers/elected representatives who are instrumental in creating this situation. Unless this is done, the process of illegal recruitment is not likely to stop, because this Court is informed that, each and every President is interested in recruiting his dear and near ones. Unless the Government takes a strict view of the matter, most of the municipalities will not be in a position to pay the regular salary to those employees who are properly recruited and because of the situation created by these people, regularly selected employees will be deprived of their salary and other benefits. I am sure that the Government will consider this aspect in a proper manner and may issue necessary direction to the concerned municipalities in order to see that this problem can be cured at the earliest and even bitter steps are also required to be taken, which may displease some. It is high time that, some bitter dose be given to cure the financial illness of the concerned municipalities.

#. So far as the facts of the present case are concerned, the grievance on the part of the petitioner Union is that the municipality had recommended implementation of the recommendations of the 5th Pay Commission in favour of the employees and after approval of the Regional Director of the Municipalities, the municipality started giving the said benefit to the employees of the members of the petitioner-union. It is submitted that the said benefit was given to the employees since 8.9.1999. However, subsequently after

considerable period, the Collector passed an interim order on 14.3.2002 under section 258 of the Gujarat Municipalities Act by which he has suspended the aforesaid benefit given by the municipality in respect of the benefits on the basis of the recommendations of the 5th Pay Commission, and, accordingly, the Collector passed the aforesaid interim order, by which the aforesaid benefit is withheld. The petitioner - union has challenged the aforesaid decision by filing this petition before this Court.

#. It is argued by Mr.Mishra that since excess recruitment is made by recruiting employees beyond the sanctioned set up, the employees, who are regularly selected, are deprived of getting the benefit of the pay scale recommended by the 5th Pay Commission. He submitted that, the said benefit has been made available since September, 1999 and in his submission, this benefit cannot be withheld after such a long time and that too, without hearing the concerned employee. Mr.Mishra further submitted that, this situation is created by the municipality by making illegal appointments and because of that, those who are regularly and properly recruited, and, who are serving since years, should not be deprived of such benefit. He has also relied upon the judgment of the Division Bench in Letters Patent Appeal No.1032 of 1999 dated 16.12.1999, wherein this Court has taken the view that, once the benefit is already given and if the decision of the municipality is acted upon, the benefit cannot be withheld without hearing the concerned person.

#. Mrs.Punani, learned AGP, on the other hand, submitted that, because of the terrible financial crisis which the municipality is facing, it is very difficult to continue the aforesaid benefits. She has also supported the reasoning given by the Collector in the impugned order.

#. Mr.Parekh, learned advocate, appearing for the municipality submitted that the municipality has already initiated action for reducing the strength of the employees so that the employment can be restricted upto the sanctioned strength. He further submitted that, in view of the abolition of octroi, the municipality is suffering grave financial difficulties.

#. So far as the contention of Mr.Mishra about hearing the concerned party is concerned, in my view, the said point is squarely concluded by the Division Bench's judgment in Letters Patent Appeal No.1032 of 1999. Since the benefit is already given to the concerned employees since September, 1999, before taking away the said

benefit, at least, the concerned employee or the union was required to be heard by the Collector, because, before taking away any rights, hearing is required to be given to the person, who is likely to be affected by such decision. So far as the impugned order of the Collector is concerned, the same is passed without hearing either the union or the concerned employees. It is required to be noted that the impugned order of the Collector is not the final order under section 258 of the Gujarat Municipalities Act, but he has merely granted the injunction by withholding the benefit of pay-scale which was granted on the basis of the recommendations of the 5th Pay Commission. However, in view of the Division Bench's judgment (supra) as well as in view of the fact that since September, 1999 the concerned employees were getting this benefit, in my view, before taking any decision under section 258, the Collector is required to give hearing to the petitioner union, which is espousing the cause of the concerned employees, who were given the benefit of the pay-scale as recommended by the 5th Pay Commission.

#. Mr.Mishra has agreed before this Court that the Collector may give hearing to the petitioner union on behalf of the regularly recruited employees as he has stated that the petitioner union is representing all of them. Mr.Mishra has fairly submitted that the petitioner union is not going to support the cause of those employees who are recruited over and above the sanctioned set up. The said statement is made by Mishra after getting instructions from the union representative, who is personally present in the Court. Since the concerned employees were required to be heard by the Collector and since no final decision is taken by the Collector under section 258, I remand the matter to the Collector for reconsideration and the Collector may pass appropriate order under section 258 of the Act after hearing the present petitioner-union, and the hearing to be given to the petitioner - union will be treated as hearing given to all the concerned employees and it will not be necessary to give hearing to each and every employee who is likely to be affected by the order of the Collector. Under these circumstances, the matter is sent back to the Collector for reconsideration of the aforesaid issue. Since the matter is sent back to the Collector, as the impugned order is passed without hearing the concerned employees, the concerned employees, who are regularly selected as per the sanctioned set up, will be entitled to the benefit of fixation of pay-scale, which may include the benefit of pay-scale as per the recommendations of the 5th Pay Commission and such

benefit should be made available to them at the time of giving them salary with effect from June, 2002 which is payable in the month of July, 2002.

##. It is clarified that, till the Collector takes the final decision in this matter, no order is required to be passed regarding the past salary of the concerned employees, as, ultimately it is for the Collector to pass appropriate order again in accordance with law. It is further clarified that the Collector is free to take appropriate decision in accordance with law and this order is passed in view of the Division Bench's judgment in Letters Patent Appeal No.1032 of 1999, wherein it is held that, without hearing the concerned person, no adverse order can be passed. It is also clarified that, so far as the benefit of fixation of pay-scale on the basis of the recommendations of the 5th Pay Commission is concerned, the same shall not be available to those employees who are recruited over and above the sanctioned set up of the municipality, and for which, no prior sanction is obtained. So far as those employees are concerned, it is for the municipality to bear the burden of their salary from its own coffer.

##. This petition is accordingly partly allowed. The matter is remanded to the Collector for fresh decision in accordance with law and the Collector may take appropriate decision under section 258 of the Gujarat Municipalities Act after hearing the petitioner union, and the concerned municipality, and such decision may be taken at the earliest and latest by 31.8.2002. It will be open for the petitioner union to satisfy the Collector on the merits of the case and may argue the case on all available points to justify their claim for getting this benefit. It is clarified that this Court has not expressed any opinion on the merits of the case one way or the other and it is for the Collector to take appropriate decision in this matter. Rule is made absolute to the aforesaid extent with no order as to costs.

##. Before parting with this order, this Court feels that the State Government will give serious thought to the problem, which has arisen not only in the Gondal Nagarpalika, but in so many other municipalities, and may take appropriate action to save the municipalities from financial crisis, which the municipalities are facing. However, it is for the State Government to solve this problem. Writ of this order may be sent to the Collector forthwith. Copy of this order may also be sent to the Chief Secretary as well as to the Secretary of the Urban Housing and Urban Development Department, Gandhinagar, so that, proper remedial measures can be taken to cure the

aforesaid evil, which is prevailing in various municipalities at present. If this is not done at the earliest, situation will get out of control.

(P.B.Majmudar,J)
(pathan)